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18 UNITED STATES DISTRICT COURT  
19 EASTERN DISTRICT OF CALIFORNIA  
20

21 MELIZA CRUZ,

22 Plaintiff,

23 v.

24 WALMART INC., a Delaware  
25 Corporation; DOES 1 through 50,  
26 inclusive,

27 Defendants.  
28

Case No. 2:21-cv-00613-WBS-CKD

**STIPULATION REGARDING ESI  
AGREEMENT AND PRODUCTION  
PROTOCOL; ~~PROPOSED~~ ORDER**

Action Filed: 2/23/2021  
Date of Removal: 4/2/2021  
Trial Date: None Set

1 The Parties agree to the following protocol for the production of discoverable  
2 documents originating from hard copy sources and as electronically stored  
3 information (“ESI”) pursuant to the Federal Rules of Civil Procedure (Fed. R. Civ.)  
4 *and subject to the parties’ Confidentiality Order.*

5 **General Provisions**

6 1. As used herein, “Requesting Party” means the party requesting  
7 production of documents. As used herein, “Producing Party” means the party that  
8 may be producing documents in response to the request of requesting party. As used  
9 herein, the words “Party” or “Parties” include the Requesting Party and the Producing  
10 Party.

11 2. This Protocol applies to the ESI provisions of Fed. R. Civ. 16, 26, 33,  
12 34, and 37. This Protocol also applies to Fed. R. Civ. P. 45, if agreed to by the  
13 recipient of any document request issued pursuant to that rule, in all instances in  
14 which the provisions of Fed R. Civ. P. 45 are the same as, or substantially similar to,  
15 the provisions of Fed. R. Civ. P. 16, 26, 33, 34, and 37. Nothing contained herein  
16 modifies Fed. R. Civ.45 and, specifically, the provision of Fed. R. Civ. 45(d)(2)(B)  
17 regarding the effect of a written objection to inspection or copying of any or all of  
18 the designated materials or premises.

19 3. Nothing in this Protocol shall be deemed to prevent any Parties from  
20 agreeing to terms different than or inconsistent with the terms of this Protocol.

21 4. Nothing in this protocol shall be deemed to constitute a waiver of any  
22 objections a Producing Party may have with respect to any document request.

23 5. This ESI Protocol is consistent with Fed. R. Civ. 26(b)(1) and limits the  
24 scope of discovery to any non-privileged data that is relevant to any party’s claim or  
25 defense and proportional to the needs of the case, considering the importance of the  
26 issues at stake in the action, the amount in controversy, the parties’ relative access to  
27 relevant information, the parties’ resources, the importance of the discovery in  
28 resolving the issues, and whether the burden or expense of the proposed discovery

1 outweighs its likely benefit. Nothing in this protocol shall obligate a Party to preserve  
2 ESI outside the scope of permissible discovery under Fed. R. Civ. 26(b)(1).

3 **Documents from hard copy sources**

4 6. The parties will produce documents originating from hard copy sources  
5 (“Hard Copy Documents”) in Group IV single-page TIFF format (black and white,  
6 300 dpi) with corresponding searchable OCR text, along with the below-listed fielded  
7 data when available. The parties will provide a standardized load file compatible with  
8 Concordance and with a Bates number field included in the load file to match text  
9 and fielded data with TIFF images. With respect to Hard Copy Documents, data on  
10 the load file will include:

- 11 a. Beginning Document Bates Number
- 12 b. Ending Document Bates Number
- 13 c. Beginning Family Bates Number (begins with 1<sup>st</sup> page of parent)
- 14 d. Ending Family Bates Number
- 15 e. Custodian or Source
- 16 f. Confidentiality Designation
- 17 g. Page Count
- 18 h. Redaction (Y/N)
- 19 i. Text File Path, including filename and extension (.txt)

20 **Electronically Stored Information**

21 Discovery of ESI shall proceed as follows:

22 7. The Producing Party shall conduct a reasonable and good faith search  
23 for documents and ESI that are subject to production under the Federal Rules of Civil  
24 Procedure. To filter ESI for relevancy prior to review and production, a Producing  
25 Party may do one or more of the following, so long as the process used meets the  
26 standard of care promulgated in Fed. R. Civ. 26(g): (i) use keyword search terms that  
27 it in good faith believes will capture responsive ESI and review search term hits for  
28 responsiveness, (ii) limit the collection and review of ESI to the custodians the  
Producing Party reasonably believes have unique documents responsive to the  
document requests; (iii) limit the collection and review of ESI to a reasonable date  
range based on the claims asserted, (iv) use technology assisted review techniques.  
The Requesting Party may suggest keyword search terms for consideration by the

Producing Party. The Producing Party will include any such search terms that do not create an undue burden, and shall inform the Requesting Party of objectionable search terms and propose alternative terms that reasonably limit the documents for review to a number proportional to the needs of the case.

8. Except as otherwise stated herein, the parties will produce documents originating as ESI, or kept as such in the ordinary course, in TIFF format with extracted text, along with the below-listed metadata fields when available. The parties will provide a standardized load file compatible with Concordance and with a Bates number field included on the load file to match text and metadata with TIFF images. With respect to ESI, data on the load file will include:

- a. Beginning Document Bates Number
- b. Ending Document Bates Number
- c. Beginning Family Bates Number (begins with 1<sup>st</sup> page of parent)
- d. Ending Family Bates Number
- e. Custodian or Source
- f. Duplicate Custodians
- g. Confidentiality Designation
- h. Page Count
- i. Redaction (Y/N)
- j. Document Date (if available)
- k. File Name (including extension)
- l. File Extension
- m. Document Type
- n. From
- o. To
- p. CC
- q. BCC
- r. Subject
- s. Email Date Received
- t. Email Time Received
- u. Email Date Sent
- v. Email Time Sent
- w. Timezone (UTC) {consider local time zone option for “time” fields}
- x. MD5 Hash Values (or alternatively agreed upon Hash Standard)
- y. Text File Path, including filename and extension (.txt)

1                   z.     Native File Path, including filename and extension

2                   9.     The parties may redact (1) information that is privileged or protected  
3     from discovery as work product or by reason of any other applicable privilege or  
4     immunity; (2) information subject to non-disclosure obligations imposed by  
5     governmental authorities, law or regulation (*e.g.*, protected personal information);  
6     and (3) sensitive, non-relevant information, including but not limited to personally  
7     identifiable information, trade secrets, or information regarding products, data, or  
8     people, within documents that contain relevant information. The parties will produce  
9     redacted documents in TIFF format with corresponding searchable OCR text and the  
10    associated metadata for the document, ensuring the redacted content is fully protected  
11    from disclosure.

12                  10.    The parties will not produce non-relevant Excel spreadsheets attached  
13    to relevant emails. The parties will produce relevant spreadsheets (*e.g.* Microsoft  
14    Excel) not requiring redaction in native format. For Excel spreadsheets requiring  
15    redaction the parties shall meet and confer regarding Native Excel Redaction verses  
16    redaction applied to converted TIFF images. When redaction is burdensome and/or  
17    for cost savings – “parties will produce relevant spreadsheets, **including those**  
18    **requiring redaction**, in native format, and limit the volume of spreadsheets needing  
19    redaction to reasonable set.” At any time, the parties may consider whether the  
20    information contained in Excel spreadsheet is available and should be produced from  
21    a structured data source from which the Excel spreadsheets are generated.

22                  11.    The parties will produce slide shows (*e.g.* Microsoft PowerPoint  
23    presentations) not requiring redaction in native format. Slide shows requiring  
24    redaction will be produced as TIFF images.

25                  12.    The parties will produce in native format those documents and ESI that  
26    do not convert well to TIFF images (in addition to Excel and Power Point, *e.g.*  
27    oversized drawings, picture files, audio and video files), or will ask the receiving  
28

1 party to meet and confer regarding a reasonable alternative form of production. The  
2 parties will produce picture files in native format, color PDF, or JPEG format when  
3 color images are available.

4 13. The file name for the documents produced in native format will consist  
5 of a Bates number and a confidentiality designation if available. The parties will  
6 provide a corresponding placeholder TIFF image for native files included in a  
7 production.

8 14. The parties may withhold documents from production by designating  
9 the documents privileged pursuant to a claim of attorney-client privilege, work  
10 product protection, or other applicable privilege or immunity in accordance with the  
11 federal discovery rules *and the parties' Confidentiality Order*. Within 45 days of the  
12 conclusion of all document productions, the Producing Party will produce a privilege  
13 log in PDF format or Microsoft Excel indicating the categories of documents  
14 withheld from production and the basis for the claim of privilege. Inadvertent failure  
15 to log privileged documents or metadata will not result in the waiver of privilege,  
16 provided that upon discovering the inadvertent omission, the Producing Party sends  
17 to the Requesting Party an addendum to the appropriate privilege log explaining the  
18 reason for the omission and providing the required privilege log entries for the  
19 document(s).

20 15. The parties will perform de-duplication of ESI within and across  
21 custodians according to MD5 or SHA-1 hash values and will produce only a single  
22 copy of identical ESI. Entire document families may constitute duplicate ESI. De-  
23 duplication shall not break up document families. All custodians of a de-duplicated  
24 document must be identified in the "Duplicate Custodians" metadata field specified  
25 in Paragraph 8. If the parties de-duplicate ESI, they shall provide custodian  
26 associations in a semi-colon delimited field that includes duplicate custodian name  
27 information for the duplicate custodians. An overlay data file shall be produced after  
28 every rolling production to account for updated duplicate custodian information in

1 the Custodian field.

2 16. Except as otherwise allowed herein, the parties shall preserve parent-  
3 child relationships (the association between an attachment and its parent document)  
4 where possible. The parties will provide a Beginning Family Bates Number and  
5 Ending Family Bates Number for each produced attachment in the data load file.

6 17. The parties shall assign a Bates number to individual pages of TIFF  
7 documents and a Bates number to each document produced in native format. Bates  
8 numbers shall be unique across the entire document production and sequential within  
9 a given document. The parties will use the following Bates numbering convention:

10 a. Walmart-Cruz [000000].

11 18. The parties understand that this protocol contemplates rolling  
12 productions of documents, and they acknowledge that nothing in this Order waives,  
13 restricts or eliminates the parties' respective rolling production obligations, the  
14 parties' respective supplementation obligations prescribed in the Federal Rules of  
15 Civil Procedure or the parties' "claw-back" rights and obligations pursuant to the  
16 *Confidentiality Order* in this case.

17 19. If the forms of production allowed by this protocol present an undue  
18 burden or cost for a Producing Party, the parties shall meet and confer to try to agree  
19 on a reasonable, alternative form of production. Nothing in this protocol prohibits a  
20 party from seeking relief from this protocol pursuant to the applicable discovery  
21 rule(s).

22 20. When documents produced in accordance with this protocol are used in  
23 any proceeding herein, including depositions, hearings, or trial, the image copy of  
24 documents as described herein (Paragraphs 6, 8, 10-12) shall be the copy used unless  
25 the image copy is so illegible or unwieldy to make it infeasible to use as a deposition  
26 exhibit, in which case the native version may be used. If the native version is used  
27 as an exhibit, the record of the deposition must identify the exhibit using its BATES  
28 number, and the BATES number shall also be written on any paper or electronic copy



1 of the exhibit. The confidentiality designation of the document shall also be stated  
2 on the record of the deposition and shall be written on any paper or electronic copy  
3 of the exhibit. Extracted text files shall not be used in any proceeding as a substitute  
4 for the image of any document. This paragraph does not apply to any summary  
5 exhibits or demonstratives.

6 21. Each party will bear the costs to process and review its own documents  
7 according to this protocol. Notwithstanding this paragraph, nothing in this Document  
8 Production Protocol limits or prohibits a prevailing party from seeking recovery of  
9 all allowable fees and costs, including attorney fees and costs, as may be permitted  
10 under applicable law and as provided by Federal Rules of Civil Procedure.

11 22. Nothing in this protocol shall be construed to affect, modify or amend  
12 the parties' *Confidentiality Order* filed with the Court.

13 23. Nothing in this protocol shall be construed to affect the discoverability  
14 or admissibility of any document or data. All objections to the discoverability or  
15 admissibility of any document or data are preserved and may be asserted at any time  
16 in accordance with the applicable discovery rules.

17 **Production of Databases and Other Structured Data.**

18 24. Generally, relevant ESI stored in databases should be produced in a  
19 mutually agreeable data exchange format.

20 25. The Parties will meet and confer to address the production and  
21 production format of any responsive data contained in a database or other structured  
22 data source. If ESI in commercial or proprietary database format can be produced in  
23 an already existing and reasonably available report form, the Parties will produce the  
24 information in such a report form, in the reasonably usable TIFF-image format. If an  
25 existing report form is not reasonably available, the Parties will meet and confer to  
26 attempt to identify a mutually agreeable report form.

27 26. Nothing herein shall obligate a Producing Party to custom reporting.  
28 The Parties shall meet and confer to discuss the associated cost and proportionality



1 of any custom reporting.

2 **Other Data Sources**

3 27. The Parties share a desire to ensure that ESI is produced in an  
4 acceptable, searchable format. The Parties recognize that certain, limited ESI may  
5 not be amenable to the proposed technical specifications. The Parties will meet and  
6 confer in good faith to reach agreement regarding these issues and the appropriate  
7 form of production, and will seek Court intervention if necessary.

8 **Deficiency Procedure**

9 28. If the Requesting Party has good cause to believe that a Producing  
10 Party's discovery efforts have been deficient, the Parties will meet and confer with  
11 the goal of identifying a means by which the Producing Party can provide assurances  
12 of the reasonableness of its discovery efforts.

13 29. As used in this section, "good cause" requires more than mere  
14 speculation; the Requesting Party must offer some concrete evidence of a deficiency  
15 in the Producing Party's discovery process.

16 30. Upon a showing of good cause, the Parties will meet and confer to  
17 consider appropriate means to assess the reasonableness of a Producing Party's  
18 discovery efforts, or to identify additional production criteria to cure the deficiency.

19 31. If the Parties are unable to agree upon a means by which the Producing  
20 Party can provide assurances of the reasonableness of its discovery efforts, the Parties  
21 will submit the dispute to the Court in the form of a joint discovery letter.

22 **Clawback Provision**

23 32. The production of privileged or work-product protected documents,  
24 electronically stored information (ESI) or information, whether inadvertent or  
25 otherwise, is not a waiver of the privilege or protection from discovery in this case  
26 or in any other federal or state proceeding.

27 33. This ESI Protocol shall be interpreted to provide the maximum  
28 protection allowed by Federal Rule of Evidence (FRE) 502(d) and shall be

1 enforceable and granted full faith and credit in all other state and federal proceedings  
2 by 28 U.S. Code § 1738. In the event of any subsequent conflict of law, the law that  
3 is most protective of privilege and work product shall apply.

4 34. Nothing contained herein is intended to or shall serve to limit a Party's  
5 right to conduct a review of documents, ESI or information (including metadata) for  
6 relevance, responsiveness and/or segregation of privileged and/or protected  
7 information before production.

8 35. If the receiving party has reason to believe that a produced document or  
9 other information may reasonably be subject to a claim of privilege, then the  
10 receiving party shall immediately sequester the document or information, cease using  
11 the document or information and cease using any work product containing the  
12 information, and shall inform the producing party of the beginning BATES number  
13 of the document or, if no BATES number is available, shall otherwise inform the  
14 producing party of the information.

15 36. A producing party must give written notice to any receiving party  
16 asserting a claim of privilege, work-product protection, or other ground for  
17 reclaiming documents or information (a "clawback request"). After a clawback  
18 request is received, the receiving party shall immediately sequester the document (if  
19 not already sequestered) and shall not review or use that document, or any work  
20 product containing information taken from that document, for any purpose. The  
21 parties shall meet and confer regarding any clawback request.

22 **Final Disposition of ESI**

23 37. Within thirty (30) days of settlement or final adjudication, including the  
24 expiration or exhaustion of all rights to appeal or petitions for extraordinary writs,  
25 each party or non-party to whom any materials were produced shall, without further  
26 request or direction from the Producing Party, promptly destroy all documents, items  
27 or data received including, but not limited to, copies or summaries thereof, in the  
28 possession or control of any expert or employee. The Requesting Party shall provide

1 written certification of destruction to the Producing Party no later than 30 days after  
2 the termination of this matter.

3 Dated: August 25, 2020

4 /s/ Ruth S. Gewing

5 Jared Beilke, Esq.  
6 Ruth Gewing, Esq.  
7 JML Law, APLC  
8 Attorneys for Plaintiff

/s/Cory J. King

9 Cory J. King  
10 Jenny Choi  
11 Mohammad B. Shihabi  
12 Ford & Harrison LLP  
13 Attorneys for Defendants

**~~[PROPOSED]~~ ORDER**

**GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and Orders the parties to conform to the terms and conditions set forth herein.

**IT IS SO ORDERED.**

**Dated: September 2, 2021**



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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